

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NORFOLK COUNTY RETIREMENT SYSTEM,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

COMMUNITY HEALTH SYSTEMS, INC.,
WAYNE T. SMITH and W. LARRY CASH,

Defendants.

THIS DOCUMENT RELATES TO ALL
ACTIONS

Consolidated
Civil Action No.: 11-Cv-0433

Judge Aleta A. Trauger
Magistrate Judge Joe B. Brown

JURY TRIAL DEMANDED

**LEAD PLAINTIFF'S RESPONSE TO DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITIES**

Defendants' 15-page blunderbuss submission does not present new and controlling authorities that bear on the pending motion to dismiss. Rather, at core, Defendants are asking the Court to resolve a factual dispute by rejecting Plaintiffs' allegation that:

- Tenet's data and analysis exposed CHS' Medicare fraud -- charges subsequently settled for \$98,000,000 with the U.S. Department of Justice -- and caused the market reaction.

Instead, Defendants would like the Court to credit Defendants' factual allegation, that:

- Tenet's lawsuit revealed the likelihood that the acquisition would fail, and the acquisition's prospective failure caused the market reaction.

The question of fact as to whether the market price declined 36% in response to the Tenet analysis or whether it was reacting to the increased likelihood that the acquisition would fail, or some combination of the two, is quintessentially a dispute to be resolved at trial by a jury. That dispute is why the Seventh Circuit's recent decision in *Glickenhause & Co. v. Household International, Inc.*, No. 13-3532, 2015 U.S. App. LEXIS 8424 (7th Cir. May 21, 2015), sending the parties back for further trial proceedings on causation, reflects exactly the distinction between

the burden in pleading loss causation and in proving it. Defendants are free to open to the jury at trial with their factual assertion that the market reaction was due to the failed acquisition. Lead Plaintiff will introduce evidence that there was already great uncertainty in the market about whether the merger would occur and the market's reaction was about the likely effect of the disclosures on CHS's prospects, and not about the merger.

Plaintiff will also prove that the Tenet lawsuit's novel and sophisticated analysis and detailed facts about CHS' undisclosed admissions practices and success disclosed new information to the market, and did not simply repackage public information.¹ CHS' denials then propped the stock price back up, until the negative impact of the abandonment of the Blue Book was reported and fully understood, as evident in the second material stock drop in October 2011.

These intensely factual disputes are not susceptible to resolution by the Court on the pleadings.

Dated: June 15, 2015

**LOWEY DANNENBERG COHEN
& HART, P.C.**

/s/ Barbara J. Hart

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¹ See *Basic, Inc. v. Levinson*, 485 U.S. 224, 249 n. 29 (1998) (The effect of public disclosures on the market price "is a matter for trial").

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2015, a copy of LEAD PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITIES, was filed with the Clerk of the Court using the CM/ECF system, which will automatically serve a copy of same upon all counsel of record, as identified in the following chart:

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Dated: June 15, 2015

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